

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Frederick L. Howell,)	C/A No. 4:12-2808-JFA-TER
)	
Petitioner,)	
v.)	ORDER
)	
Joseph McFadden, Warden, of Lieber)	
Correctional Institution,)	
)	
Respondent.)	
)	

The *pro se* petitioner, Frederick L. Howell, is an inmate at the Lieber Correctional Institution. He brings this action under 28 U.S.C. § 2254 challenging his 2005 conviction and sentence for first degree burglary.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the petition is untimely and barred by the statute of limitations. The respondents filed a motion for summary judgment, and the petitioner responded to the motion.² The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

Recommendation, which was entered on the docket on October 28, 2013. The petitioner filed timely objections to the Report.


The Magistrate Judge opines that the § 2254 petition is time-barred under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d). Additionally, the Magistrate Judge suggests that the petitioner cannot show that he is entitled to equitable tolling. For these reasons, the Magistrate Judge suggests that summary judgment be entered in favor of the respondent.

In light of the petitioner's objections to the Report, and petitioner's response to the respondent's motion for summary judgment, the court wishes to receive further analysis from the Magistrate Judge on the issue of the petitioner's cause for his procedural default under the Supreme Court case of *Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309 (2012).

Upon receipt of a supplemental Report and Recommendation, and the parties' responses thereto, the court will complete its review of the matter.

IT IS SO ORDERED.

January 2, 2014
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge